THE HON'BLE Mr. JUSTICE V. ESWARAIAH

Writ Petition No.22933 of 2004

and

Contempt Case No.825 of 2005

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Dated: December 21, 2005

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Writ Petition No.22933 of 2004

Between:

Alapati Satyanarayana Murthy, Business,

S/o. Bhaskara Ramayya, aged 64 years,

R/o. Shares Business, Plot No.31,

Meenakshi Estates, Secunderabad.

… Petitioner

And

The Mandal Executive Magistrate,

Rajanagaram, E.G. District, and

two others.

… Respondents

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Contempt Case No.825 of 2005

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Between:

Alapati Satyanarayana Murthy,

S/o. Bhaskara Ramayya, aged 64 years,

R/o. Shares Business, Plot No.31,

Meenakshi Estates, Secunderabad.

… Petitioner

And

Satyanarayana,

The Mandal Executive Magistrate,

Rajanagaram, E.G. District,

and two others.

… Respondents

Common Order:

Heard the learned counsel appearing for the petitioner in the writ petition as well as the contempt case, the learned Government Pleader for Revenue appearing for the first respondent and the learned Government Pleader for Home appearing for the second respondent, and also Sri N. Subba Reddy, learned senior counsel appearing for the third respondent.

2. The petitioner filed the said writ petition to direct the Mandal Executive Magistrate,

Rajanagaram, East Godavari District, to sell the paddy, which is harvested from the lands in R.S.Nos.341, 342, 346, 340, 336, 327, 329, 330, 383/1, 383/2, 383/3 and 338 at Narendrapuram village, East Godavari District, which is the subject matter of M.C.No.18 of 2004 before the first respondent. It is the case of the petitioner that the third respondent, who is his younger brother, and his father, were adjudged insolvent in I.P.No.24 of 70, a petition filed by the creditors under the provisions of the Provincial Insolvency Act ('the Act' for brevity). The father of the petitioner and the third respondent own an extent of Ac.50.00 cents in Narendrapuram village, East Godavari District, and none of the family members were interested in cultivating the said lands. The petitioner invested certain amounts in cultivating the said lands. It is stated that he has given the said lands on lease and the third respondent tried to enter into possession of the said lands by filing several applications before the Official Receiver, Rajahmundry, and the Official Receiver returned his applications, against which, the third respondent filed an appeal before the District Judge, East Godavari District, and against the said orders, C.R.P.s have been filed.

3. It is stated that petitioner himself raised the paddy crops and started harvesting from 18-11-2004 and it continued till 22-11-2004, but the third respondent tried to interfere with the said land of the petitioner and to take away the crop. It is stated that the petitioner also filed a report before the second respondent on 28-11-2004, but the same was not registered. It is stated that meanwhile, the first respondent initiated proceedings under Section 145 of the Code of Criminal Procedure in M.C.No.18 of 2004 and the preliminary order was passed on 01-12-2004. Pending disposal of the proceedings under Section 145 Cr.P.C., the petitioner filed this writ petition seeking Mandamus directing the Mandal Executive Magistrate to sell the paddy crop.

4. This Court, while issuing Notice Before Admission on 10-12-2004, directed Respondent Nos. 1 and 2 to ensure that the paddy on the field is not removed or stolen by anyone, and it is preserved in a proper condition.

5. It is stated that the said order was communicated to Respondent Nos. 1 and 2 by telegram on 10-12-2004 and they received the telegram on 11-12-2004, but they have not taken any steps to ensure that the paddy in the said filed is not removed or

stolen by anybody. Taking advantage of the fact that no orders have been passed by this Court against the third respondent, he took away the crop on 10-12-2004. Therefore, the petitioner filed C.C.No.825 of 2005 to punish Respondent Nos. 1 and 2 under the Contempt of Courts Act for their willful disobedience of the orders of this Court dated 10-12-2004 in W.P.No.22933 of 2004.

6. In the writ petition, counter and Vacate Stay Petition have been filed by the respondents stating that the third respondent filed an application before the Official Receiver to lease out the said lands, but the said application was returned by the Official Receiver, against which the third respondent filed an appeal before the District Judge in A.S.No.53 of 2004 along with an I.A. to lease out the said lands. The learned District Judge passed orders to lease out the said lands on a Makta fixed by the Official Receiver, at Rs.1,83,960/- per annum.

As the said lease amount was high, the third respondent filed I.A.Nos.1566 and 1567 of 2004 in A.S.No.53 of 2004 seeking to modify the rent fixed and to grant 3 equal installments for payment of the said makta and also to stay the order of the Official Receiver dated 09-06-2004. The learned District Judge passed a common order in both the said I.A.s on 28-06-2004 and accepted the amount fixed by the Official Receiver towards rent and refused to reduce the quantum of rent. Again, third respondent filed another application in I.A.No.1780 of 2004 in I.A.No.1567 of 2004 for modification of the order dated 28-06-2004 and requested for installments. The learned District Judge by his order dated 29-06-23004 granted three equal monthly installments. Pursuant to the said order, third respondent stated that he has deposited first installment and thereafter he was put in possession of the said land by the Official Receiver and he has been cultivating the said land as a lessee. It is stated that as against the said order of the District Judge, writ petitioner filed C.R.P.s on the file of this Court and those C.R.P.s were disposed of by order dated 23-11-2004 observing that all those contentions can be raised before the District Judge. Thus, it is the contention of the third respondent that he was put in possession of the said lands as a lessee and he only cultivated the said lands and he has every right to take away the crop. As against the said contention, I do not find any material whatsoever to accept the contention of the petitioner that he is cultivating the said lands and raised the crops. Therefore, no relief can be granted to the petitioner in the writ petition to sell away the said crop and to preserve the sale proceeds, when the

matter is pending before the District Judge as well as the Official Receiver with regard to the disposal of the properties in the insolvency proceedings. Therefore, I do not see any merits in the writ petition. The writ petition is accordingly dismissed.

7. Insofar as the contempt case is concerned, the learned counsel appearing for the first respondent submits that the order of this Court has been received on 11-12-2004 directing Respondents Nos. 1 and 2 to ensure that the paddy in the field is not removed or stolen by anyone and to be preserved in a proper condition. It is stated that immediately after receipt of the telegram from this Court, which was received on 11-12-2004, the Deputy Mandal Revenue Officer addressed a letter dated 11-12-2004 and despatched the same to the Station House Officer, Rajanagaram P.S., to protect the crop on the lands. But the second respondent-Station House Officer filed a counter stating that he is not personally aware about the orders of this Court passed on 10-12-2004 and the telegram was not personally received by him on 11-12-2004 and his staff might have received the telegram, but they did not bring it to his notice on or before 17-12-2004. It is further stated that the Senior Telegraphic Master in charge of the Telegraph Office, Charminar, Hyderabad, in his letter dated 22-12-2004, mentioned that the Telegram AR 69 dated 10-12-2004 was delivered on 11-12-2004 at 10:15 hours and 10:20 hours but there is no information positively as to who received the telegram and to whom actually it was delivered. The Mandal Revenue Officer states that in fact the telegram was despatched by Ordinary Post on 11-12-2004 and also produced the Local Desptach Register. A perusal of the Local Desptach Register goes to show that all the letters were personally delivered and the signatures of the receivers were taken. The Mandal Executive Magistrate as well as the Station House Officer, both are residing at Rajanagaram and if that be so, there is no justification of the part of the first respondent to despatch the letter by post. It appears that there is a dishonest intention on the part of Respondent Nos. 1 and 2 to mislead the Court to believe that the first respondent has taken steps to inform the same to the second respondent by sending the letter through Ordinary Post. When a letter is to be communicated in the local station, sending the letter by post is without any justification whatsoever. Therefore, I am of the opinion that the behaviour, conduct and character of Respondent Nos. 1 and 2 is liable to be deprecated and reprimanded. However, as the petitioner has not got a genuine case affecting his personal life and liberty, I have taken a lenient view to deal with the

matter against the action of Respondent Nos. 1 and 2.

8. With the aforesaid observations, both the writ petition and the contempt case are dismissed. No costs.

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JUSTICE V. ESWARAIAH

December 21, 2005

MRR